

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARILYN WATKINS,

Plaintiff,

INFOSYS, d/b/a INFOSYS, Ltd.,

Defendant.

CASE NO. C14-0247-JCC

ORDER DENYING DEFENDANT'S
MOTION FOR THE SANCTION OF
DISMISSAL AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendant's Motion for the Sanction of Dismissal (Dkt. No. 76) and subsequent briefing (Dkt. Nos. 77, 86, 87, 88, 97, and 98),¹ as well as Defendant's Motion for Summary Judgment (Dkt. No. 72) and subsequent briefing (Dkt. Nos. 73, 74, 75, 89, 90, 91, 99, and 100).²

The Court determines that it is a close call whether to dismiss the above-captioned matter as a sanction for Plaintiff's willful misconduct, although—based on Plaintiff's perjury and spoliation—such a sanction would be justified. However, given the public policy favoring a

¹ More specifically, the declaration of Thomas Carroll and exhibits (Dkt. No. 77), Plaintiff's response (Dkt. No. 86), Plaintiff's declaration (Dkt. No. 87), the declaration of Brian Dolman (Dkt. No. 88), Defendant's reply (Dkt. No. 97), and a second declaration of Thomas Carroll (Dkt. No. 98).

² More specifically, the declaration of Srikantan Moorthy (Dkt. No. 73), the declaration of Nandita Gurjar (Dkt. No. 74), the declaration of Thomas Carroll (Dkt. No. 75), Plaintiff's response (Dkt. No. 89), the declaration of Plaintiff (Dkt. No. 90), the declaration of Brian Dolman (Dkt. No. 91), Defendant's reply (Dkt. No. 99), and a second declaration of Thomas Carroll (Dkt. No. 100).

declaration of Thomas Carlton (Dkt. No. 100).
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1 merits-based disposition of the case, coupled with the availability of summary judgment briefing,
2 the Court declines to dismiss the case as a sanction. However, given the severity of the
3 misconduct, the Court hereby ORDERS Plaintiff's counsel to SHOW CAUSE as to why Federal
4 Rule of Civil Procedure 11(b) has not been violated by their conduct.

5 Having thoroughly considered the parties' briefing and the relevant record, the Court
6 finds oral argument unnecessary and hereby DENIES the motion for the sanction of dismissal
7 and GRANTS the motion for summary judgment for the reasons explained herein.

8 **I. BACKGROUND**

9 Plaintiff Marilyn Watkins brings the above-captioned lawsuit against her former
10 employer, IT-services provider Infosys, alleging discrimination based on her race/national origin,
11 retaliation, and breach of promise. (Dkt. No. 1 at 12.) Plaintiff is Caucasian and a Canadian
12 citizen with Permanent Resident status in the United States. (*Id.* at 10.) She worked for several
13 years as a manager with Defendant Infosys—a foreign company headquartered in Bangalore,
14 India—in its Bellevue, Washington office. (*Id.*) In September of 2013, she was terminated. (*Id.* at
15 12.) Plaintiff claims that her termination—as well as her treatment in terms of compensation and
16 job title—was motivated by discrimination based on her race and nationality. (*Id.*) Defendant has
17 consistently indicated that Plaintiff's termination was the result of a global, company-wide
18 reduction in force in the Education and Research group (“E & R”) in which Plaintiff worked.
19 (*See, e.g.* Dkt. No. 72 at 2; 76 at 1.) That reduction in force caused Defendant to eliminate all
20 E&R positions in the U.S. and the United Kingdom, as well as positions in China and India.
21 (Dkt. No. 76 at 1.)

22 The behavior of both parties in the present litigation has been problematic. Numerous
23 discovery disputes have required Court intervention in producing documents, scheduling
24 depositions, and disclosing expert reports. (*See* Dkt. Nos. 29, 33, 53, 55, 57, 66, 67, and 81.) The
25 Court awarded Plaintiff attorney fees based on Defendant's failure to comply with discovery
26 orders. (Dkt. No. 66 at 4.) At different points in this litigation, both sides have dodged sensible

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1 opportunities to litigate cooperatively. (See, e.g., Dkt. No. 66 at 3 (describing Defendant's
 2 noncompliance with Court discovery orders);³ Dkt. No. 86 at 3 n. 1, 4 n. 2 (Plaintiff's semantic
 3 hair-splitting regarding the scope of requests for interrogatories)).

4 **II. DISCUSSION**

5 **A. Motion for the Sanction of Dismissal**

6 **1. Factual Background**

7 On or about October 20, 2013, Plaintiff performed a Bing search for the term "disk
 8 wipe," downloaded and installed "MiniTool Drive Wipe" software onto the hard drive of her
 9 work computer, and ran the program to wipe files including folders entitled "D:\E&R\Infosys
 10 Termination," and "My New Role Lawsuit." (Dkt. No. 77-10 at 9; Dkt. No. 76 at 5.) Moreover,
 11 eleven external media drives had been connected to Plaintiff's laptop in the days prior to the disk
 12 wipe. (Dkt. No. 76 at 4.) Defendant became aware of this fact through its own consultation with
 13 an expert. (*Id.*)

14 However, in previous, sworn testimony, Plaintiff responded to interrogatories indicating
 15 that she had "produced the contents of her computer to Defendant as part of her Initial
 16 Disclosures," that "she did not 'remove' things from Defendant's premises," and that she
 17 "followed procedures typical with such litigation . . . to avoid the alteration or deletion of
 18 documents, in addition to preserving data back-ups relating to her employment." (Dkt. No. 77-2
 19 at 9, 13.) In other words, in her responses to Defendant's interrogatories, signed February 3,
 20 2015, Plaintiff perjured herself. (*Id.* at 26.)

21 Furthermore, the rationale Plaintiff has provided—both for wiping the computer files and

22
 23 ³ "On March 27, 2015, the Court granted Plaintiff's motion to compel this discovery, and Defendant apparently
 24 believed that it could circumvent the Federal Rules and the Court's order while awaiting a more specific ruling. (See
 25 Dkt. No. 56, p. 2.) In so doing, Defendant wasted Plaintiff's time as well as judicial resources by forcing this issue to
 26 be readdressed in a Motion for Reconsideration. The Court reiterates that, while it is true that Plaintiff's Motion to
 Compel may have lacked the desired specificity with regard to the production of written discovery, (see Dkt. No. 53,
 pp. 5–6; Dkt. No. 36-1, p.7), neither did Defendant provide *any* authority or support for its contention that it did not
 need to provide discovery based on these "out of the U.S." objections, (see Dkt. No. 42, pp. 7–8) until now." (Dkt.
 No. 66 at 3.)

1 for failing to disclose information and documents related to the wipe—have been nonsensical. In
 2 her deposition, Plaintiff admitted for the first time that she wiped the files, claiming that she did
 3 so out of concern for information preservation⁴ and client confidentiality.⁵ (Dkt. No. 77-13 at
 4 12–13.) In a supplemented response, filed on the last day of discovery,⁶ Plaintiff again refused to
 5 turn over the wiped contents of her work computer, asserting that, “all electronic records, save
 6 for unsent drafts, passed through Defendant’s servers and, therefore, the company is already
 7 possession [sic] of this information.” (Dkt. No. 77-14 at 10.) Plaintiff continued, “the electronic
 8 records not previously produced or utilized in this litigation are vast and irrelevant to the claims
 9 or controversies in this case.” (*Id.*) Finally, Plaintiff rather unconvincingly indicated that she
 10 “[was] in the process of replicating all documents that she retained and will provide the same to
 11 Defendant upon their soonest availability.” (*Id.*)

12 The Court finds Plaintiff’s responses both illogical and unbelievable. First of all, it belies
 13 the very concept of a “disk wipe,” to argue that wiped files would continue to be in Defendant’s
 14 possession. Second, not only does Plaintiff’s unilateral determination of the irrelevance of files
 15 in her sole possession usurp the judicial function; it is also contradicted by her subsequent
 16 reliance on the very same documents. (Dkt. No. 90 at Exs. A, H, R, S; Dkt. No. 91 at Ex. 4.)
 17 Third, a hollow promise to gather and produce evidence at the conclusion of discovery does not
 18 undermine the misconduct, spoliation, and perjury already committed—nor does Plaintiff’s late
 19 production of 15,000 pages of documents without the corresponding flash drives. (*See* Dkt. No.
 20

21 ⁴ Q: Would wiping your computer be consistent with taking special attention to avoid the alteration or
 deletion of documents?

22 A: Yes, it would be.

23 Q: And how would that be, wiping your computer?

24 A: I felt that I needed to protect the information that was on my computer, so I preserved it, and then I
 eliminated it, more or less, from the drive.

25 ⁵ Q: You wiped it so it wouldn’t have anything on it if they redeployed it?

26 A: Correct. I had a lot of Infosys confidential information by virtue of being a Job Level 8 . . . I had client
 data. It was unconscionable to me that that information would end up in the hands of somebody that
 shouldn’t . . .

⁶ In so filing at the close of the discovery period, Plaintiff falsely characterized “[t]hese interrogatories and requests
 for production” as “continuing in nature.” (Dkt. No. 77-14 at 1.)

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1 77-15.)

2 Plaintiff's brief in response to Defendant's motion for the sanction of dismissal only
 3 exacerbates the problem. (Dkt. No. 86.) There, Plaintiff regurgitates flimsy justifications for
 4 wiping her disk drive, doubles-down on her unsupported argument about the irrelevance of the
 5 wiped files, and asserts blankly that "there has been no actual suppression or withholding of
 6 evidence since the entire content of Plaintiff's computer has been produced to Defendant."⁷ (*Id.*
 7 at 7, 9.)

8 **2. Standard of Review**

9 District courts possess an inherent power to dismiss cases where "a party has engaged
 10 deliberately in deceptive practices that undermine the integrity of judicial proceedings."
 11 *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995).

12 Before imposing the sanction of dismissal, courts in the Ninth Circuit must weigh five
 13 factors: (1) the public's interest in expeditious resolution of litigation, (2) the court's need to
 14 manage its dockets, (3) the risk of prejudice to the party seeking sanctions, (4) the public policy
 15 favoring the disposition of cases on their merits, and (5) the availability of less drastic sanctions.

16 *Anheuser-Busch*, 69 F.3d at 348; *Leon*, 464 F.3d at 958. The Court reviews Plaintiff's perjury
 17 and spoliation in light of these five factors.

18 **a. Public Interest in Expeditious Resolution/the Court's Need to Manage Its
 19 Docket**

20 The first two factors, public interest in the expeditious resolution of cases and the Court's
 21 need to effectively manage its docket, both favor dismissal. Plaintiff's actions resulted in the
 22 concealment and destruction of evidence, seriously delaying the progress of this litigation. As the
 23 Court previously acknowledged, discovery in this case has not gone smoothly; the discovery

24 _____
 25 ⁷ Plaintiff adds that she "is prepared to turn over the USB drives to Defendant on the condition that agreement is
 26 reached on how to protect the privacy and confidentiality of Plaintiff's personal data . . ." (Dkt. No. 86 at 7, n.3.) Plaintiff misses the mark: this is no longer a discovery dispute, and the time for such delay tactics has passed.

1 deadline had to be extended not once but four times based on the behavior of both parties. (Dkt.
 2 Nos. 24, 26, 66, 70). Twice the parties have sought Court intervention via telephonic conference.
 3 (Dkt. Nos. 24, 81.) Even after the discovery completion deadline, the parties continue to bring
 4 discovery-related disputes to the Court. (Dkt. No. 104, Dkt. No. 86 at 7, n.3). In other words, the
 5 above-captioned matter has required substantial judicial resources. While it is true that both
 6 parties have obstructed the expeditious resolution of this matter, the Court finds that Plaintiff's
 7 spoliation, perjury, and delayed disclosures have contributed immensely to this litigation's lack
 8 of forward momentum.

9 **c. Risk of Prejudice to Defendant**

10 Consideration of the third factor, the risk of prejudice to the party moving for sanctions,
 11 also favors dismissal of this case. The prejudice inquiry requires courts to "look[] to whether the
 12 spoiling party's actions impaired the non-spoiling party's ability to go to trial or threatened to
 13 interfere with the rightful decision of the case." *Leon v. IDX Systems Corp.*, 464 F.3d 951, 959
 14 (9th Cir. 2006) (internal parentheses omitted). Plaintiff's actions fit squarely within this
 15 description. Despite Plaintiff's insistence to the contrary, wiping and withholding evidence from
 16 Defendant goes right to the heart of Defendant's ability to litigate or try this case.

17 **d. Merits-Based Disposition**

18 The fourth factor, the over-arching public policy favoring a merits-based disposition of
 19 any given case, plainly tips against dismissing this case as a sanction. The summary judgment
 20 briefing before the Court enables such a merits-based disposition of this case.

21 **e. Availability of Less Drastic Sanctions**

22 Consideration of the fifth and final factor weighs against dismissal. The Court does not
 23 take lightly the degree to which perjury taints the possibility of fair judicial proceedings. *See*
 24 *Arnold v. County of El Dorado*, 2012 WL 3276979, at *4 (E.D. Cal. 2012) ("[P]erjury on any
 25 material fact strikes at the court of the judicial function . . .). Lying under oath and submitting
 26 false discovery responses constitute deliberate misconduct warranting the sanction of dismissal.

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1 *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488 (9th Cir. 1991) (“Dismissal is an appropriate
 2 sanction for falsifying a deposition.”).

3 Prior to implementing the sanction of dismissal, however, it is appropriate for district
 4 courts to (1) consider the feasibility of less drastic sanctions, (2) to implement other sanctions
 5 short of dismissal, and (3) to warn the offending party of the possibility of dismissal before so
 6 ordering. *Leon*, 464 F.3d at 960 (quoting *Anheuser-Busch*, 69 F.3d at 352). In particular,
 7 warnings prior to dismissal are frequently required by reviewing courts. *Malone v. U.S. Postal*
 8 *Service*, 833 F.2d 128, 133 (9th Cir. 1987) (“Failure to warn has frequently been a contributing
 9 factor in our decisions to reverse orders of dismissal.”). The Court is aware that no such warning
 10 has been given to Plaintiff—largely because the extent of Plaintiff’s misconduct was not made
 11 known to the Court prior to this latest round of motions.

12 Upon consideration of the five factors announced by the Ninth Circuit, the Court finds
 13 that three weigh in favor of dismissal and two do not. While it’s an incredibly close call, the
 14 Court prefers to address this case, finally, on its merits. As such, Defendant’s motion for the
 15 sanction of dismissal (Dkt. No. 76) is hereby DENIED.

16 **3. Order to Show Cause re: Rule 11 Sanctions**

17 Federal Rule of Civil Procedure 11(c)(3) authorizes the Court, on its own initiative, to
 18 “order an attorney, law firm, or party to show cause why conduct specifically described in the
 19 order has not violated Rule 11(b).” Rule 11(b) establishes that the signature of an attorney on any
 20 pleading represents a certification that the enclosed arguments are nonfrivolous, supported by
 21 evidence, and not presented for improper purpose. The Court has serious misgivings about
 22 counsel’s signature on various pleadings submitted in this litigation—most specifically,
 23 Plaintiff’s answers to Defendant’s first set of interrogatories and requests for production in which
 24 Plaintiff perjured herself. (Dkt. No. 77-2 at 26–27.)

25 Counsel for Plaintiff is hereby ORDERED to show cause as to why sanctions should not
 26 issue against them. This response, not to exceed eight (8) pages, is due to the Court on or before

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1 August 7, 2015.

2 **B. Motion for Summary Judgment**

3 **1. Relevant Factual Background**

4 Plaintiff was hired by Infosys Consulting, Inc. in 2005. (Dkt. No. 75-2 at 3.) In 2011,
5 Infosys Consulting, Inc. was merged into Defendant's Management Consulting Services
6 ("MCS") group. (*Id.* at 4–5.) Plaintiff became a "Senior Principal" in the MCS department in
7 2007. (Dkt. No. 75-2 at 7.) In April, 2012, Plaintiff was promoted—despite not meeting the
8 initial requirements of the job posting—to head the Management and Consulting Skills
9 Department ("Head – MCSD"), a position housed in the Education & Research ("E&R") group.
10 (Dkt. No. 75-2 at 17.) A company-wide reduction in force led to the elimination of Plaintiff's
11 position in August 2013. (Dkt. No. 73 at ¶¶ 20–21.)

12 Plaintiff's complaints of discrimination are three-fold: she alleges (1) that she was
13 wrongly denied an increase in compensation when assuming the Head – MCSD position, (2) that
14 she was wrongly denied a title, and (3) that her termination was discriminatory in nature.

15 **a. Compensation**

16 Defendant assigns its employees two "levels," a "Job Level" to designate their position
17 level within the company, and a "Personal Level" identifying an individual employee's
18 compensation relative to others. (Dkt. No. 75-1 at 7–8.) Whereas the Job Level is connected with
19 each given position, an employee's Personal Level pertains to his or her compensation, follows
20 them individually, and is subject to change during a "compensation review cycle." (*Id.* at 7–10.)
21 It is not unprecedented for an employee to have a Job Level incongruent with her Personal Level.
22 (*Id.*)

23 Plaintiff entered into her role as Head – MCSD in the E&R group in July, 2012. (Dkt.
24 No. 75-2 at 21.) Because hers was an internal promotion, pursuant to Defendant's policy,
25 Plaintiff was not eligible for an increase in her Personal Level until the next "compensation
26 review cycle." (Dkt. No. 73-2 at 5.) Accordingly, while Plaintiff's Job Level increased to 8 by

1 virtue of the position, her Personal Level remained a 7. (Dkt. No. 73-3 at 2.)

2 Plaintiff was dissatisfied with her compensation upon entering her new position. Multiple
 3 times, she inquired about a compensation increase and, accordingly, an increase in her Personal
 4 Level. (Dkt. No. 73 at ¶¶ 11, 12.) Plaintiff contends that between July and September of 2012 her
 5 supervisor, Strikantan Moorthy, verbally promised her an eventual compensation increase
 6 commensurate with new MCS partners.⁸ (Dkt. No. 75-2 at 30–31.) No writing memorializes this
 7 agreement—and Plaintiff does not contend that such writing exists.⁹ (See Dkt. No. 89 at 5.)
 8 Subsequent e-mail communication from Mr. Moorthy confirmed that Plaintiff's new Job Level
 9 was an 8, but was silent with respect to her Personal Level. (Dkt. No. 73-3 at 2.)

10 In July 2013, a compensation review cycle took place. (Dkt. No. 73 at ¶ 14.) Plaintiff's
 11 compensation was reviewed at that time. (*Id.*) It was then determined that Plaintiff's
 12 compensation, which carried over from her previous department where employees are paid more,
 13 was already consistent with her new position. (*Id.*)

14 **b. Title**

15 In addition to the designations that accompany an employee's Job Level and Personal
 16 Level, Defendant also recognizes certain employees by way of a title, such as Associate Vice
 17 President. (Dkt. No. 73 at 2.) Based on specific criteria, Defendant holds a “title-holder”
 18 recognition process about once a year. (Dkt. No. 75-1 at 6.) For positions based in the U.S., a
 19 partnership selection process supplants the “title-holder” recognition process. (Dkt. No. 75-4 at
 20 3–4.) This process was not undertaken in the company at all during 2012. (*Id.* at 15.)

21 Earlier in her career with Defendant, Plaintiff aspired to move up in the company
 22 hierarchy from Senior Principal to a “partner” in the MCS department, a desire she expressed
 23 beginning around 2008. (Dkt. No. 75-1 at 9–11.) The partnership process, roughly equivalent to
 24

25
 26⁸ Plaintiff was not, however, a partner herself.

⁹ Plaintiff only argues that Mr. Moorthy later wrote in an e-mail, “I remember our conversation.” (Dkt. No. 89 at 5.)
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1 a “title-holder” process in Defendant’s non-U.S. locations, typically occurs about once per year.
 2 (Dkt. No. 75-4 at 3–4; Dkt. No. 75-3 at 5–6.) The process includes a self-nomination form, due
 3 diligence review by a selection committee of partners, and—if deemed a good candidate—a
 4 presentation to the company’s partners. (Dkt. No. 75-3 at 5–6.) Plaintiff began to seek
 5 consideration for a partner position for the first time in 2011, with the understanding that the
 6 process would begin in February 2012. (Dkt. No. 75-2 at 13–14.) It was communicated to
 7 Plaintiff that she was eligible to be considered for a partner role in 2012. (*Id.* at 14.)

8 Before undergoing that process, however, the Head – MCSD position was created. (Dkt.
 9 No. 75-2 at 17.) In April 2012, Plaintiff was selected for that position despite not meeting the
 10 requirements of the initial job posting. (*Id.* at 17–21.) Having received this promotion, Plaintiff
 11 withdrew herself from consideration for partner. (*Id.* at 21.) At that time, her candidacy for the
 12 title of partner was in the due diligence stage. (*Id.* at 15.)

13 While Plaintiff withdrew herself from the partner selection process after being selected as
 14 Head – MCSD in 2012, she continued to seek a title after assuming that role. (Dkt. No. 73 at ¶
 15 19.) In June of 2013, Plaintiff asked Mr. Moorthy about being considered for a title. (Dkt. No.
 16 73-6 at 2.) In July 2013, it was determined that Plaintiff was not eligible to be considered for a
 17 title because of her most recent performance rating. (Dkt. No. 74 at ¶ 11.)

18 **c. Termination**

19 A change in company leadership in June 2013 led to a cost reduction initiative. (Dkt. No.
 20 73 at ¶ 20.) This led to a global reduction in force eliminating approximately two hundred
 21 positions across various locations and departments. (Dkt. No. 75-5 at 5). The positions
 22 eliminated included all ten high-paying E&R positions: of these four were in the United States,
 23 two were in the United Kingdom, and four were in China. (Dkt. No. 73 at ¶ 21.) Consequently,
 24 Plaintiff’s position was eliminated. (*Id.*)

25 When Plaintiff received confirmation that her position would be eliminated, Nandita
 26 Gurjar, the new head of the E&R group, offered either to seek opportunities for Plaintiff in India

1 or provide her with a severance package. (Dkt. No. 74 at ¶ 8.) Plaintiff did not express openness
 2 to working in India. (*Id.*) Rather, Plaintiff was authorized to apply for positions in other
 3 departments within the company by September 15, 2013. (*Id.* at ¶¶ 8–9; Dkt. No. 75-2 at 50–51.)
 4 The procedures implemented in Defendant’s cost-optimization process allowed employees
 5 whose positions had been eliminated to apply for other open jobs at their Job Level. (Dkt. No.
 6 75-2 at 45.) Plaintiff was allowed to apply at either a Job Level 7 or 8, in a relaxation of the
 7 policy. (*Id.* at 46–47.) Plaintiff was considered for two positions. (Dkt. No. 75-8 at 3.) Of those
 8 two, she and the interview team agreed that one was not a good fit. (*Id.*) She was not considered
 9 a fit for the second position based on its location. (*Id.*) Finally, a partner in the MCS group
 10 looked into using an available hiring slot to find a position for Plaintiff, but the MCS group was
 11 itself downsizing and unable to accommodate a new hire. (Dkt. No. 75-4 at 8–9.)

12 On September 3, 2013, Plaintiff filed an internal complaint alleging national origin
 13 discrimination, breach of promise, retaliation, wrongful termination, and wage discrimination.
 14 (Dkt. No. 73-8.) A third-party investigator concluded that Defendant’s reduction in force efforts
 15 were supported by legitimate reasons. (Dkt. No. 75-7 at 3–7.)

16 **2. Standard of Review**

17 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, “[t]he court shall grant
 18 summary judgment if the movant shows that there is no genuine dispute as to any material fact
 19 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In making such
 20 a determination, the Court must view the facts and justifiable inferences to be drawn therefrom in
 21 the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
 22 255 (1986). Once a motion for summary judgment is properly made and supported, the opposing
 23 party “must come forward with ‘specific facts showing that there is a *genuine issue for trial.*’”
 24 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R.
 25 Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a dispute
 26 about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a

1 verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-specific
 2 statements in affidavits are not sufficient, and “missing facts” will not be “presumed.” *Lujan v.*
 3 *National Wildlife Federation*, 497 U.S. 871, 888–89 (1990). Ultimately, summary judgment is
 4 appropriate against a party who “fails to make a showing sufficient to establish the existence of
 5 an element essential to that party’s case, and on which that party will bear the burden of proof at
 6 trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Facts or declarations made in support
 7 of, or opposition to, a motion for summary judgment must be based on personal knowledge and
 8 otherwise admissible in evidence.¹⁰ Fed. R. Civ. P. 56(c)(4).

9 Plaintiff alleges four claims: (1) race/national origin discrimination in violation of Rev.
 10 Code. Wash. § 49.60.180, (2) discrimination in compensation, job status, and terms and
 11 conditions of employment, presumably in violation of the same, (3) retaliation in violation of
 12 Rev. Code Wash. § 49.60.210, and (4) breach of promise of specific treatment. (Dkt. No. 1 at
 13 12.) The Court addresses these claims in two stages: turning first to the discrimination claims, all
 14 of which fail for lack of a prima facie case, and second to the breach of promise claim which
 15 fails as a matter of law.

16 The Court finds that, with respect to each claim, no genuine dispute of material fact exists
 17 and that Defendant is entitled to judgment as a matter of law. Accordingly, Defendant’s motion
 18 for summary judgment (Dkt. No. 72) is GRANTED.

19 **3. Plaintiff Fails to Establish Even a Prima Facie Case of Discrimination**

20 Plaintiff’s first three claims—all brought under the Washington Law Against
 21 Discrimination (“WLAD”)—are appropriately considered together. Plaintiff’s second claim that
 22 she was “discriminated against . . . in her compensation, job status, and terms and conditions of
 23 her employment because she is Caucasian/North American,” is essentially a recitation of her
 24

25
 26¹⁰ The Court agrees that Plaintiff submitted inadmissible evidence in support of her response, and disregards exhibits
 or declarations made without the declarant’s firsthand knowledge as required by Federal Rule of Evidence 602.

1 first, and fails to direct the Court to any independent legal authority. (Dkt. No. 1 at 12.) The
 2 Court understands claims one through three as alleging that race and nationality-based
 3 discrimination occurred in the context of (1) Plaintiff's compensation, (2) Plaintiff's title, and (3)
 4 Plaintiff's termination.

5 Where, as here, a plaintiff brings a discrimination claim under the WLAD without direct
 6 evidence, Washington courts are to employ the burden-shifting analysis under *McDonnell*
 7 *Douglas*, 411 U.S. 792 (1973). *Scrivener v. Clark College*, 181 Wash. 2d 439, 446 (Wash. 2014).

8 The *McDonnell Douglas* framework first requires a prima facie showing that: "(1)
 9 plaintiff is a member of a protected class; (2) plaintiff applied for [a benefit or treatment] and
 10 was qualified to receive it; (3) the [benefit or treatment] was denied despite being qualified; and
 11 (4) defendant approved [the benefit or treatment] for a similarly situated party during a period
 12 relatively near the time plaintiff was denied [the benefit or treatment]." *Riehl v. Foodmaker, Inc.*,
 13 15 Wash. 2d 138, 149–50 (Wash. 2004); *Gamble v. City of Escondido*, 104 F.3d 300, 305 (9th
 14 Cir. 1997). After the plaintiff proves her prima facie case, the burden shifts to the defendant to
 15 articulate a "legitimate, nondiscriminatory reason for its action." *Id.* Finally, if the defendant has
 16 carried its burden, the plaintiff must then prove, by a preponderance of the evidence, that the
 17 reason asserted by the defendant is a "mere pretext." *Id.*

18 A *McDonnell Douglas* prima facie case is not the equivalent of a finding of actual
 19 discrimination, but rather creates an inference of discriminatory animus that the action was more
 20 likely than not based on impermissible considerations. *See Sanghvi v. City of Claremont*, 328
 21 F.3d 532, 537 (9th Cir. 2003) (quoting *Gay v. Waiters' & Dairy Lunchmen's Union, Local No.*
 22 30, 694 F.2d 531, 546 (9th Cir. 1982)). A prima facie case under *McDonnell Douglas* is one in
 23 which "the plaintiff has met his immediate burden of production, but not necessarily his ultimate
 24 burden of persuasion." *Id.* (quoting *Gay*, 694 F.3d at 543 n. 10).

25 Here, there remains no genuine dispute of material fact such that Plaintiff could prove a
 26 prima facie case of discrimination under the *McDonnell Douglas* framework. The Court turns

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1 individually to the three ways Plaintiff alleges she was discriminated against: in her
 2 compensation, her title, and her termination.

3 **a. Compensation**

4 There is no genuine dispute of material fact as to whether Plaintiff was discriminated
 5 against in her compensation. Turning to the *McDonnell Douglas* test, while there is no dispute
 6 that Plaintiff's claim of racial discrimination places her in a protected class,¹¹ she cannot
 7 establish the remainder of a *prima facie* case.¹²

8 Having established that she is a member of a protected class, Plaintiff must next show
 9 that she applied for a benefit or treatment for which she was qualified. *Riehl v. Foodmaker, Inc.*,
 10 15 Wash. 2d 138, 149–50 (Wash. 2004); *Gamble v. City of Escondido*, 104 F.3d 300, 305 (9th
 11 Cir. 1997). As Plaintiff was not qualified to receive increased compensation,¹³ her *prima facie*
 12 case fails here. As the Court's discussion above outlines, Plaintiff sought a compensation
 13 increase despite having retained a salary from a higher-paying department. (Dkt. No. 73 at ¶ 14.)
 14 There is no genuine dispute, supported by admissible evidence, that Plaintiff's compensation
 15 review cycle was handled any differently than her peers of Indian race or descent.

16 Furthermore, even if Plaintiff could establish that she was entitled to a compensation
 17 increase, which she was not, she fails to establish that a similarly-situated party was approved for
 18 one. When Plaintiff assumed her role as Head – MCSD, her base salary was \$203,164 with a
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20 ¹¹ Discrimination based on race is considered a violation of the WLAD. Rev. Code. Wash. §§ 49.60.030, 49.60.180.
 21 Minority status is not required by the statute, but rather any discrimination based on “race,” is covered. *Id.*
 22 Furthermore, under *McDonnell Douglas*, Courts construe *any* racial discrimination as satisfying the first step of the
 23 *prima facie* case, even where the litigant is Caucasian. *See Aragon v. Republic Silver State Disposal Inc.*, 292 F.3d
 24 654, 659 (9th Cir. 2002), *as amended* (July 18, 2002) (“It is well-established that Title VII applies to any racial
 25 group, whether minority or majority.”) (citing *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278 (1976)).

26 ¹² The Court agrees with Defendant that, at times, Plaintiff's national origin discrimination claim conflates the
 27 concept of location with national origin or ancestry. *See Lemnitzer v. Philippine Airlines*, 783 F. Supp. 1238, 1240–
 28 41 (N.D. Cal. 1991) (applying Title VII and granting summary judgment of national origin claims based on a
 29 complaint that defendant failed to appoint plaintiff to overseas positions); Rev. Code. Wash. § 49.60.040(18). The
 30 Court proceeds with its analysis focusing primarily on Plaintiff's race-based discrimination claims. However, as
 31 Plaintiff's standing as a protected class member is not in dispute, it is largely an irrelevant point.

¹³ Quite the opposite: Plaintiff was selected for a promotion despite *not being qualified* for the initial job posting,
 32 which strongly negates her claim of discrimination.

1 potential performance bonus of \$81,266. (Dkt. No. 73 at ¶ 16.) Effective July 1, 2013, her base
2 salary was increased to \$218,792 with a potential performance bonus of \$65,638. (*Id.*) Of the
3 three colleagues of Indian nationality whom Plaintiff identifies as her peers, accounting for
4 exchange rates applicable on July 1, 2013, their individual annual compensations were \$154,548,
5 \$148,620, and \$132,060.¹⁴ (*Id.* at ¶ 17.) In other words, not only was Plaintiff not eligible or
6 qualified to receive a compensation increase based on her role and history with the company, she
7 has not established that any similarly-situated employee was granted the benefit she sought. She
8 cannot carry her burden to establish a *prima facie* case of discrimination in her compensation.

9 **b. Title**

10 Nor does there exist a genuine dispute of material fact as to whether Plaintiff was
11 discriminated against in her pursuit of a title. While, again, she meets the first showing that she
12 belongs to a protected class, Plaintiff cannot make the rest of her *prima facie* case.

13 Plaintiff sought some sort of title twice; (1) first, by way of the partner application
14 process, from which she withdrew (*see* Dkt. No. 75-2 at 21), and (2) second, via the “title-
15 holder” application process, for which she was determined unqualified (*see* Dkt. No. 74 at ¶ 11).
16 In other words, the first time Plaintiff sought a title, she was never denied anything as she
17 withdrew from the process. Furthermore, the company did not undergo a titleholder process at all
18 in 2012, and so Plaintiff is unable to show that a similarly-situated person of a different race or
19 national origin received such a benefit. (Dkt. No. 75-4 at 15.) The second time she sought a title,
20 Plaintiff was not qualified to receive the benefit based on her performance reviews. (Dkt. No. 74
21 at ¶ 11). Plaintiff’s *prima facie* case fails at step two.

22 There is no genuine dispute as to whether Plaintiff can establish that she was
23 discriminated against in her pursuit of a title, and her claims related to this effort fail as a matter
24 of law.

25 _____
26¹⁴ The Court is not aware of any cost-of-living adjustment to these figures.

1 **c. Termination**

2 Finally, with respect to Plaintiff's termination, a prima facie case of discrimination
 3 cannot be shown. As has been thoroughly discussed, Plaintiff's position was eliminated based on
 4 a large-scale, global reduction in force.¹⁵ While, here, Plaintiff has established that she is a
 5 member of a protected class and that she lost a benefit—her position—despite qualification, she
 6 cannot make a showing regarding the fourth step of the *McDonnell Douglas* prima facie case. In
 7 short, Defendant did not “approve” the benefit for a similarly-situated party, as there is no
 8 dispute that Plaintiff's position was eliminated altogether.

9 Plaintiff argues that she has demonstrated discrimination based on the fact that Defendant
 10 hired employees in India around the time her U.S.-based position was eliminated. (Dkt. No. 89 at
 11 11.) However, this argument conflates location with national origin discrimination as discussed
 12 above: Plaintiff has not presented admissible evidence¹⁶ regarding the actual race or national
 13 origin of the employees hired to work in India.¹⁷ Moreover, the hiring of employees based in
 14 India is entirely consistent with the cost optimization and reduction in force Defendant openly
 15 acknowledges implementing. Plaintiff cannot make a prima facie showing of discrimination in
 16 her termination.

17 For the above reasons, Defendant's motion for summary judgment with respect to
 18 Plaintiff's first three claims is appropriately GRANTED.

19 **4. No Genuine Dispute Exists Regarding the Oral Promise Made to Plaintiff**

20 Finally, the Court turns to Plaintiff's fourth claim for breach of promise of specific
 21 treatment, which fails as a matter of law. To establish a breach of promise of specific treatment,

22 ¹⁵ Plaintiff's arguments regarding the quality of her job performance are therefore irrelevant. (See Dkt. No. 86 at 9.)

23 ¹⁶ Rather than provide admissible evidence, Plaintiff makes statements such as, “Plaintiff also proffered
 24 circumstantial evidence that tends to question the objectivity of Defendant targeting layoff [sic] of U.S-based
 25 employees,” and “[t]his is a case where Plaintiff established both comparative and statistical evidence to support the
 26 inference that Defendant targeteing Caucasian, U.S.-based workers . . .” (Dkt. No. 89 at 11.) Plaintiff's response
 brief is riddled with statements such as this, which do nothing to generate a genuine dispute of material fact.

¹⁷ Rather, her contention that, “I understand that Ms. Gurjar hired Indians/Asians exclusively . . .” is not based on
 personal knowledge and lacks evidence. (See Dkt. No. 90 at 10.)

1 Plaintiff must prove “that a statement (or statements) in an employee manual or handbook or
2 similar document amounts to a promise of specific treatment in specific situations[.]” *Korslund*
3 *v. DynCorp Tri-Cities Servs, Inc.*, 156 Wash. 2d 169, 184–85 (Wash. 2005). Courts consider the
4 claim of breach of promise of specific treatment to require a written agreement or understanding.
5 See *Winspear v. Boeing Co.*, 75 Wash. App. 870, 876 (Wash. App. 1994). As it is undisputed
6 that any agreement between Plaintiff and Mr. Moorthy was oral,¹⁸ Plaintiff’s claim for breach of
7 promise of specific treatment fails as a matter of law. Accordingly, Defendant is entitled to
8 summary judgment over this last claim.

9 **III. CONCLUSION**

10 For the foregoing reasons, Defendant’s motion for the sanction of dismissal (Dkt. No. 76)
11 is DENIED and Defendant’s motion for summary judgment (Dkt. No. 72) is GRANTED.

12 DATED this 23 day of July 2015.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

¹⁸ While the Court acknowledges that Mr. Moorthy could have expressed more professional courtesy to Plaintiff in their e-mail correspondence, e.g. clarifying that her Personal Level would be revisited upon the next compensation review cycle rather than remaining silent on the issue, this is far from actionable.

ORDER DENYING DEFENDANT’S MOTION
FOR THE SANCTION OF DISMISSAL AND
GRANTING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT
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